Supreme Court, U.S.
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Number 92668

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM
1992

ERWIN & ERWIN,

Petitioner,

vs.

SUZAN BREWER,

Respondent

On Petition for Writ of Certiorari
To The United States Court of
Appeals for the Ninth Circuit

MOTION TO STRIKE

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MOTION TO STRIKE

Comes now petitioner and moves to strike the proposed "Lodgings" submitted by Charles Robinowitz in behalf of respondent, Suzan Brewer, as follows:

VIOLATION OF RULES:

The filing does not designate on the cover an "Attorney of Record" who is admitted to the Bar of the Supreme Court in violation of Rules (9) and 33 (2), Rules of the Supreme Court.

Charles Robinowitz may not be admitted to the Bar of the Supreme Court of the United States of America (Supreme Court Rules 9, 33 (2).

The size of the enclosures and attachments do not conform to Rule 33 (1) (d) of the Rules of the Supreme Court in that they are all 8 1/2 x 11 inches instead of the required 6 1/8 x 9 1/4 inches.

ON THE MERITS

The proposed appearance in behalf of Suzan Brewer attempts to insert in the record a totally uncertified and only selected portion of matters not ever seen by the United States District Court for the District of Oregon nor by the Ninth Circuit Court of Appeals.

This tactic is the exact same tactic employed illegally (unfortunately successfully) in the Brewer appeal to the United States District Court for the District of Oregon and adopted by the Ninth Circuit Court of Appeals in its de novo approach.

No item included in the proposed "Lodgings" was included in Brewer's designation of record to the District Court of Oregon and therefore was not included in the record submitted to the Court of Appeals by the U. S. District

Court Clerk (see transmittal of record petitioner's appendix page 190-197).

SUGGESTION FOR SANCTION

Rule 33 (7) of Rules of the Supreme Court of the United States of America provide that the Supreme Court may levy sanction against lawyers improperly using the court's process to cause additional expense to the opposition or to the court when made with knowing and intentional violation of Rule 33. It would appear that it would be proper to levy such a sanction against counsel for Suzan Brewer.

Mr. Robinowitz has continuously sought to harrass petitioner and abuse the process of the Rules of Court and the legislative requirements applicable to appeals.

Suggestions for sanctions are made as appropriate to the facts disclosed by

the documents entitled "Lodgings" submitted by Charles Robinowitz.

The documents entitled "Lodgings" are:

1. One page of debtor's statement of affairs in the bankruptcy court;

2. Copy of Suzan Brewer's objection to Proof of Claim;

3. Copy of Brewer's second amended objection to proof of claim;

4. Copy of one page (page five) of Marquam Investment's bankruptcy Schedule A-3;

5. Copy of one page (page six) of Marquam Investment's bankruptcy Schedule B-1. (Real property);

6. Copy of one page (page seven) of Marquam Investment's bankruptcy Schedule B-2 (Personal property);

7. Copy of Page eight of Exhibit A. The exhibit was a summary of time involved in services provided by Erwin &

Erwin to the debtor, Marquam Investment Corporation;

8. Copy of pages 10 and 11, entitled "Summary of Matters and setoff of lease payments."

(Note: The "index" accompanying the so-called "Lodgings" says this item (8) represents a copy of page 59 of Exhibit A Supplemental.) (This is the concluding summary page of a 59-page exhibit which the Ninth Circuit stated was nonexistent but which Brewer now tenders to the court as a "Lodging."

OBSERVATIONS

Rule 33 (7) of the Rules of the Supreme Court of the United States direct that the Clerk of that court shall not accept or file any document which does not conform to the rules.

Petitioner assumes therefore that the so-called "Lodgings" will not be accepted nor filed in case number 92-668

and the foregoing may be of no assistance and may be disregarded. However, insofar as consideration of "sanctions" is concerned, the following observations may be of some assistance:

1. As to all eight items:

a) None are properly identified as to where they appear in the record before either the U. S. District Court for the District of Oregon, nor in the record before the Ninth Circuit Court of Appeals. They do not appear in either.

b) None have any relevance to the matters raised in the petition for certiorari nor as proof of any fact of which petitioner has not already advised this court by its petition, appendix and submittals.

c) Item seven above was an attachment to the proof of claim of Erwin & Erwin (bankruptcy transcript, May 6, 1985, p. 56 through 63, as being

supported by time slips, testimony of L. Mullennex, Secretary). It was prepared in accordance with the direction of Bankruptcy Judge Johnson and was admitted as exhibit, page 115. Mr. Robinowitz specifically waived objection. It was not ever seen nor examined by either the United States District Court for the District of Oregon nor was it ever seen by the Ninth Circuit Court of Appeals although discussed in the transcript (Petitioner's appendix, Transmittal of record, p. 190-195).

d) Item eight above is a portion of an exhibit prepared some two years later as ordered by bankruptcy judge Hess for the purposes of establishing reasonable value of services performed by Erwin & Erwin, in behalf of the debtor.

This item likewise was not designated by Brewer as an item of designated record on her appeal to the

United States District Court for Oregon, and therefore, was not included in the record submitted by the Clerk of that court to the Ninth Circuit Court of Appeals and therefore could not have been considered by that appellate court.

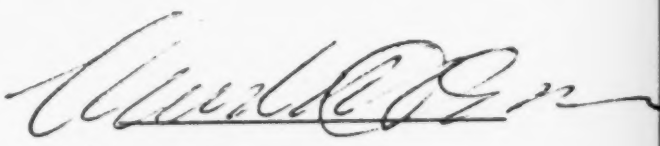
This document totalled some 59 pages and was never seen by either appellate court. The Ninth Circuit Court of Appeals held that this exhibit did not exist. It not only existed but was compelling as being conclusive as to the extent and nature of service provided. It was unimpeached.

The reason for its inclusion as a proposed "Lodging" by the attorney for Suzan Brewer is without explanation as to possible relevance.

It is apparently an ill-concealed attempt to:

1. Make an unauthorized appearance by an unadmitted attorney as counsel in the Supreme Court or

2. Insert in the record as though having been considered by the appellate courts, matters which were never designated as a part of the appellate record and were never considered by either appellate court and hence matters known and intended by the offeror to be equally illegal when offered to the Supreme Court of the United States of America.



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